

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,

Case No. 2:19-mj-00969-DJA

**Plaintiff,**

V.

MATTHEW MICHAEL HANSEN,

## ORDER

**Defendant.**

This matter is before the Court on Defendant's Motion to Dismiss (ECF No. 8) filed on March 3, 2020. The Government filed a Response (ECF No. 11) on March 13, 2020. The Defendant filed a Reply (ECF No. 12) on March 20, 2020. The Court finds this matter properly resolved without further argument or an evidentiary hearing.

## I. BACKGROUND

The Defendant Matthew Michael Hansen is charged in a three count Complaint as follows: In Count One, Negligent Boating in violation of 36 CFR §3.8(b)(8); in Count Two, 2 with Failure to Keep Proper Lookout in violation of 36 CFR §3.2(a) and 33 CFR §83.05; and in Count Three, with Failure to Complete the Mandatory Boating Education Requirement in violation of 36 CFR §3.6C and NRS §488.730(3). (ECF No. 2). In his motion to dismiss, Hansen utterly fails to address any of the underlying facts related to these three charges. (ECF No. 8). While the underlying facts are not determinative of the Court’s decision on the motion as it relies primarily on legal reasons in support of dismissal, a brief outline of the facts charged in the complaint is necessary for context in consideration of the Court’s decision.

According to the complaint, Hansen was driving a pontoon boat in the Lake Mead National Recreation Area when he decided he wanted to beach it. (ECF No. 11). Hansen had the boat propeller trimmed up (or out) of the water. (*Id*). Hansen attempted to beach the boat

1 without assistance but was unable to do so. (*Id.*). Several people, including an individual  
2 identified as L.B., entered the water to assist Hansen. (*Id.*). Hansen lowered the propeller into the  
3 water and engaged the engine. (*Id.*). Without looking to see who was in the way in the water,  
4 Hansen engaged the engine at full throttle and initiated a turn. (*Id.*). This turning of the propeller  
5 caused L.B. to be sucked into the propeller blade causing severe lacerations, including significant  
6 injury to her leg, which was ultimately amputated below the knee. (*Id.*).

7 Hansen moves to dismiss Counts 1 and 2 of the Complaint because he claims that the  
8 regulations charged conflict with other statutes addressing the same conduct. Hansen argues that  
9 these statutes provide only for civil penalties for violation while the regulations under which he is  
10 charged specify criminal penalties. Hansen argues that because an agency's regulations may  
11 never supersede a Congressional statute, the regulations are invalid as they impose criminal  
12 liability for conduct which is only subject to civil penalty under federal statute. Finally, Hansen  
13 argues that Count 1 must be dismissed because imposition of criminal liability for ordinary  
14 negligence violates due process.

15 The Government responds that the National Park Service, not United States Coast Guard  
16 statutes, regulates boating in national parks. (ECF No. 11). The Government further argues that  
17 the National Park Service has broad regulatory authority over the waters within its parks, which  
18 includes boating on those waters. The Government also argues the National Park Service is  
19 authorized to enforce criminal penalties of its regulations pursuant to 18 U.S.C. §1865. Finally,  
20 the Government argues the regulations making Hansen's conduct criminal do not violate due  
21 process because the National Park Service is empowered to make and enforce such regulations  
22 under 54 U.S.C. §100751.

23 Hansen replies that the wholesale adoption of the United States Code section relating to  
24 negligent boating and United States Coast Guard laws by the National Park Service creates a  
25 conflict between that statute and the charged regulation that must be resolved in favor of the  
26 statute. (ECF No. 12). Finally, Hansen replies that the regulation under which he is charged  
27 alleging simple negligence runs afoul of well-established principles that criminal liability must  
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1 be premised on a consciousness of wrongdoing. For those reasons, Hansen is requesting that this  
2 Court dismiss Counts 1 and 2. Hansen does not request dismissal of Count 3.

3 **II. DISCUSSION**

4 **A. The National Park Service Has Broad Regulatory Authority to Establish  
5     Regulations to Regulate Water Within its Boundaries That are Complimentary  
6     to Coast Guard Laws.**

7 Federal regulations are rules created by federal agencies to interpret and implement laws  
8 Congress passes regarding those agencies. See e.g., *Manhattan General Equipment Company v.  
9     Commissioner of Internal Revenue*, 297 U.S. 129, 134 (1936); *Chevron USA, Inc. v. Natural  
10 Resources Defense Council, Inc.*, 467 U.S. 837, 842-3 (1984). An agency is required to look at  
11 the statute and determine what rules should be fashioned to implement the program created by  
Congress. *Morton v. Ruiz*, 415 U.S. 199, 231 (1974).

12 The National Park Service was created by Congress pursuant to the Organic Act of 1916.  
13 Its authority expanded with the 1970 National Park Service General Authorities Act, as amended  
14 in 1976. In 2014, these authorities were recodified. (See, 54 U.S.C. et. seq.) 54 U.S.C. §100751  
15 was among other regulations that were recodified and it addresses boating and other activities on  
16 or relating to water within the National Park Service. That regulation specifically states that the  
17 Secretary of the National Park Service may prescribe regulations concerning boating or other  
18 activities on or relating to water located within the national park system, including water subject  
19 to the jurisdiction of the United States. 54 U.S.C. §100751(b). It further states that the  
20 subsection shall be complementary to, and not in derogation of, the authority of the Coast Guard  
21 to regulate the use of water subject to the jurisdiction of the United States. (*Id.*) Also, it provides  
22 for criminal penalties pursuant to 18 U.S.C. §1865.<sup>1</sup> This National Park Service regulation, and  
23 the two under which Hansen is charged, are promulgated pursuant to the National Park Services'  
24 broad regulatory authority over waters within national parks.

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<sup>1</sup> The penalties provide for up to six (6) months in custody and/or a fine, making the violations  
28 Class B misdemeanors.

1 Any question that the Secretary, acting through the Director of the Park Service, has broad  
2 regulatory authority to administer rules related to park behavior was unequivocally answered by  
3 the United States Supreme Court in *Sturgeon v. Frost*, 139 S.Ct. 1066 (2019). There, in  
4 considering a challenge to the National Park Services' regulatory authority under the Alaska  
5 National Interests Land Conservation Act, the Supreme Court clarified that the Director of Park  
6 Services has broad authority to regulate waters within the park system. (*Sturgeon*, at 1076).  
7 Citing 54 U.S.C. §100751 the Supreme Court noted that the Secretary "shall prescribe such  
8 regulations as (he) considers necessary or proper for the use and management of system units."  
9 (*Id*, citing §100751(a)). And he may, more specifically, issue regulations concerning "boating or  
10 other activities on or relating to water located within system units." (*Id*, citing §100751(b)). The  
11 Supreme Court concluded that "the Park Service freely regulates activities on all navigable (and  
12 some other) waters "within a park's boundaries". (*Id*, citing 236 C.F.R. §1.2A3). Thus, there is  
13 no question that the National Park Service has broad regulatory authority over the waters within  
14 the parks and that authority is not superseded by the United States Coast Guard statutes.

15 While the National Park Services adopted Coast Guard laws and regulations to assist in  
16 governing its waters, that adoption was explicitly designed so that the regulations would be  
17 complimentary. *See* 54 U.S.C. §100751(b). The National Park Service explained this point when  
18 publishing the most recent revisions of its regulations:

19 "There has been some general confusion about the order of applicability or  
20 hierarchy of adopting USCG regulations and state boating safety laws and  
21 regulations in relation to NPS specific regulations contained in Part 3. The required  
22 order of applicability, or hierarchy, of laws and regulations on park waters is as  
follows:

- 23 1. **Regulations in Title 36, Code of Federal Regulations (CFR) will  
apply over any comparable law or regulation.**
- 24 2. Laws and regulations of the USCG adopted pursuant to § 3.2 (a) will  
apply over any comparable state law or regulation.
- 25 3. Non-conflicting state boating safety laws and regulations that are not  
addressed by either 36 CFR or by the USCG are adopted pursuant to  
3.2(b). The NPS is not adopting state water use laws or regulations  
unless specifically indicated in Part 3.

1           **Where the NPS, USCG, and State have a comparable but different rule, the**  
2           **NPS rule applies first**, except where we have specifically adopted the more  
3           stringent rule in our regulation (See 3.10(a)(2)). The USCG rule will apply when no  
4           NPS rule exists and if the NPS and USCG do not have a rule then the State boating  
5           safety rule applies.”

6           72 FR 13694, Supplementary Information, found at

7           <https://www.federalregister.gov/documents/2007/03/23/E7-5111/boating-and-water-use-activities> (last accessed March 9, 2020) (emphases added); *see also* 54 U.S.C. §  
8           100751(b) (explaining that the Park Service boating regulations and Coast Guard laws  
9           will be complementary). This clearly dispels any confusion regarding whether or not the  
10          Coast Guard law supersedes the National Park Service regulation – in favor of the  
11          National Park Service.

12           The Defendant’s argument that the Coast Guard statute trumps the National Park  
13          Service regulation relies entirely on two cases. (ECF No. 8 at p.2). However, as outlined  
14          below, these cases are inapposite and do not stand for the proposition that the Coast Guard  
15          statute in question trumps the National Park Service regulations.

16           In *United States v. Doe*, 701 F.2d 819 (9th Cir. 1983), the Ninth Circuit did find that  
17          where there is a clear conflict between a federal statute and an administrative regulation, the  
18          statute controls. *Doe* at 823. However, in *Doe* there was a direct conflict in a statute and  
19          regulation that applied equally to the defendant in that case. Specifically, the defendant in  
20          *Doe* was a juvenile arrested for committing a crime and fingerprinted in accordance with an  
21          INS regulation that conflicted with the fingerprint procedures of the Juvenile Delinquency  
22          Act. In resolving that conflict, the court found that the statute trumped the regulation.  
23          Here, there is not a direct conflict between the regulation and the statute. As outlined in 54  
24          U.S.C.A. §100751, the regulation shall be complimentary to the Coast Guard statute and  
25          simply provides for criminal penalties when the act occurs on a body of water within the  
26          National Park Service boundaries. This clearly is a lawful use of the broad power given to  
27          the National Park Service to regulate water within National Park Service boundaries, such  
28          as Lake Mead.

Likewise, the Defendant's reliance on *United States v. Maes*, 546 F.3d 1066 (9th Cir. 2008) is misplaced. In *Maes*, the defendant was stopped on Department of Veteran Affairs ("VA") property and was found to have possessed drugs. *Maes* could have been charged with drug possession under a regulation governing VA property or under a statute charging criminal possession of drugs. Both the regulation and the statute applied equally to the acts that led to the charges against *Maes*. *Maes* argued that the VA regulation that provided for lesser criminal culpability should supersede the general criminal possession statute. However, the court found that *Maes* had not shown that Congress intended the regulation to supersede the general criminal possession statute and the prosecutor was within his discretion to choose which to charge. *Maes* at 1070. Thus, the Defendant's reliance on *Maes* for the proposition that the Coast Guard statute would trump the National Park Service regulation is misplaced and does not require the Court to dismiss counts one and two under these circumstances.

The Defendant's framing of the issue in this case as whether or not the Coast Guard criminal statute trumps a National Park Service regulation is incorrect. Rather, the question is whether the criminal regulations under which Hansen is charged are a proper use of the National Park Service's regulatory authority to govern the waters within Park Service jurisdiction. There is no question that the National Park Service has been given broad authority to regulate the activities on all navigable waters within the park's boundaries. The two regulations under which Hansen has been charged are clearly an exercise of that delegated authority. That authority is not trumped by similar Coast Guard statutes that are complimentary to the National Park Service regulation. Therefore, the Court finds that the Coast Guard statutes do not trump the National Park Service regulations. For these reasons, the motion to dismiss on this basis must be denied.

**B. The National Park Service Regulation Imposing Criminal Liability for Ordinary Negligence Does Not Violate Due Process of Law**

It is well established that a public welfare statute may subject a person to criminal liability for his or her ordinary negligence without violating due process. *United States v.*

1        *Hanousek*, 176 F.3d 1116, 1121 (9<sup>th</sup> Cir. 1999). Public welfare offenses are offenses that  
2        “involve statutes that regulate potentially harmful or injurious items.” *Staples v. United*  
3        *States*, 511 U.S. 600, 607 (1994). As the Supreme Court stated in *Staples*, “We have  
4        reasoned that as long as a defendant knows that he is dealing with a dangerous device of a  
5        character that places him ‘in a responsible relation to a public danger,’ he should be alerted  
6        to the probability of strict regulation.” (*Id*, internal citation omitted). The Defendant argues  
7        that a recreational boat is not the type of harmful or injurious item that would normally be  
8        the subject of a public welfare offense. (ECF No. 8 at p. 8). The Defendant further argues  
9        “[t]here is nothing inherently dangerous about operating a recreational boat.” (*Id* at p. 9).  
10       However, nothing could be further from the truth, especially not when considering the  
11       circumstances of this case.

12           A recreational boat, especially a pontoon boat such as the one in question here, is  
13       exactly the type of dangerous instrument for which the negligence standard applies. This is  
14       exactly why there are rules and regulations promulgated to ensure the safety of those  
15       operating the vessel as well as those occupying the vessel. That is also the reason that there  
16       is a regulation requiring boaters to complete mandatory boating education requirements,  
17       something that Hansen’s failure to do resulted in count three. Thus, the nature and character  
18       of the item regulated (boating) is clearly such that its regulation is a public welfare statute  
19       for the protection of those using the water within the National Recreation Area.

20           Criminalizing negligent boating and failure to keep a proper lookout are both valid  
21       exercises of the Park Service’s broad ability to regulate conduct for the protection of the  
22       public. *See United States v. Bohn*, 622 F.3d 1129, 1135 (9<sup>th</sup> Cir. 2010) (upholding two Park  
23       Service regulations, for failing to wear a helmet and obey a lawful order, as constitutional  
24       because they directly related to protection of the public). These regulations do not violate  
25       the Defendant’s due process rights by providing criminal penalties based on a criminal  
26       negligence standard. Significantly, Defendant did not cite any cite law supporting his  
27       position for these specific regulations, nor is the Court aware of any such case law finding  
28       the lower negligence standard unconstitutional. Indeed, the Court is not aware of any such

1 due process challenge regarding the mens rea requirement as to these regulations being  
2 brought previously. Accordingly, because these regulations are clearly for the purpose of  
3 the public's welfare, the Court finds the lower negligence standard is not unconstitutional.  
4 For these reasons, Hansen's motion to dismiss on this basis is denied.

5 IT IS THEREFORE ORDERED that Defendant Hansen's Motion to Dismiss (ECF  
6 No. 8) is **DENIED**.

7 DATED: April 30, 2020



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10 DANIEL J. ALBREGTS  
11 UNITED STATES MAGISTRATE JUDGE  
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